Local 32B–32J, Service Employees International Union, AFL–CIO *and* Austin Gardens Owners Corp. Case 29–CB–10135

September 30, 1998

DECISION AND ORDER

On February 17, 1998, Administrative Law Judge Eleanor MacDonald issued the attached decision. The Charging Party filed exceptions and a supporting brief with an exhibit. The Respondent filed a brief in opposition to the Charging Party's exceptions and a motion to strike the Charging Party's exhibit.[1]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions[3] and to adopt the recommended Order.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

Henry J. Powell, Esq., for the General Counsel.
Ira A. Sturm, Esq. (Raab & Sturm, LLP), of New York, New York, for the Respondent.
Morris Tuchman, Esq., of New York, New York, for the Charging Party.

DECISION

STATEMENT OF THE CASE

ELEANOR MACDONALD, Administrative Law Judge**.** This case was heard on October 8, 1997, in Brooklyn, New York. The complaint alleges that the Union, in violation of Section 8(b)(3) of the Act, obtained an arbitration award against Austin Gardens Owners Corp. enforcing the terms of a collective-bargaining agreement and refused to bargain with Austin Gardens over the terms of a collective-bargaining agreement. The Union denies that it has violated the Act and asserts that it is a party to a valid collective-bargaining agreement with Austin Gardens and that the issues in the instant case should be deferred to arbitration.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, the Charging Party, and the Respondent in December 1997, I make the following[1]

FINDINGS OF FACT

I. JURISDICTION

Austin Gardens Owners Corp., a New York corporation, with a place of business located in Forest Hills, New York, is engaged in the operation and maintenance of residential buildings. Annually, Austin Gardens Owners Corp. receives gross revenues in excess of $500,000 and purchases goods and services in excess of $5000 from entities within the State of New York, which entities in turn purchase these goods directly from firms located outside the State of New York. The parties agree, and I find, that Austin Gardens Owners Corp. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that Local 32B–32J, Service Employees International Union, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Facts

1. Negotiations and strike

Austin Gardens Owners Corp. is a cooperative corporation. Although the evidence shows that many of the shareholders occupy apartments in the buildings, some of the owners of shares in the corporation do not live at the premises.[2] Chaim Babad, identified as the sponsor, that is the person who effectuated the cooperative plan, still retains enough shares in the corporation to select three members of its seven-person board of directors. Babad is also the managing agent of the cooperative.[3]

John Doyle, a resident shareholder and board member of Austin Gardens, is the treasurer of the corporation. Doyle testified that for many years the corporation had been a member of the RAB, the management association with which Local 32B–32J negotiates for building service workers.[4] There is no dispute that the employees of Austin Gardens were covered by the 1991–1994 collective-bargaining agreement negotiated with the Union. Unknown to the other members of the board of directors, Managing Agent Babad had stopped paying dues to the RAB at some point, and the association membership of Austin Gardens lapsed. Thus, when the 1994–1997 collective-

[1] We grant the Respondent's motion to strike the Charging Party's Exh. A which was attached to its exceptions. In doing so, we note that the Charging Party does not contend that this evidence was unavailable during the hearing or that it was evidence newly discovered since the close of the hearing. See Sec. 102.48 (d) (1) of the Board's Rules and Regulations.

[2] The Charging Party has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951).

We have carefully examined the record and find no basis for reversing the findings. However, we do not rely on the judge's drawing an adverse inference from the General Counsel's failure to put into evidence a copy of Jeffrey Gottlieb's report to the police regarding threats made to him. We note that the judge's discrediting of Gottlieb had independent bases in the contradiction between his testimony and a remark he had made to John Doyle about a single call to his wife, his failure to tell managing agent Babad about the alleged threatening calls, and Doyle's credited testimony that Gottlieb seemed eager to sign the contract because of the other tenants' sympathy for the employees.

[3] In view of our adoption of the administrative law judge's finding that the contract was not signed under duress, we find it unnecessary to pass on the Charging Party's exception to her alternative finding that we should defer to an arbitration award, issued after the Charging Party had failed to appear before the arbitrator, declaring that the contract was binding on the Charging Party.

[1] Certain errors in the record have been noted and corrected.

[2] The record does not disclose how many buildings are included in Austin Gardens.

[3] The undisputed testimony shows that Babad owns or manages many other properties and that he employs about 10 Yugoslavian workers at these other locations. See *J.R.R. Realty Co.,* 273 NLRB 1523 (1985); *Tilden Arms Management Co.,* 276 NLRB 1111 (1985).

[4] RAB stands for Realty Advisory Board on Labor Relations, Inc.

bargaining agreement between the Union and the RAB was negotiated, it did not cover the Austin Gardens employees. It is unclear when the majority of the board members learned of this state of affairs. Eventually, the Union submitted its independent building contract to Austin Gardens and demanded bargaining.

Jeffrey Gottlieb, the president of the board of directors, has been a member of the board since 1991.[5] Gottlieb testified that in the summer of 1996 he met with Union Business Agent Anthony Spataro to discuss the proposed contract for 1994–1997.[6] Gottlieb began by going through a number of complaints that the board had concerning the work of the three employees at Austin Gardens. After listening to his complaints, Spataro gave him the contract and asked him to sign it. According to Gottlieb, he replied that he had no right to sign a collective-bargaining agreement without the concurrence of the board. Spataro testified that Gottlieb told him that he had to go back and check with the rest of the board of directors before he signed the contract. According to Spataro, Gottlieb did not say explicitly that he had no right to sign the contract without the concurrence of the board and he did not say that he needed board approval.

The uncontradicted evidence shows that at an annual shareholders meeting held in July 1996, Gottlieb informed those present that he was very close to signing the collective-bargaining agreement with the Union.

In October 1996, Gottlieb informed Spataro that there would be a board meeting to discuss the contract and he apparently invited Spataro to attend. Spataro did not come to the meeting.[7] Gottlieb stated that the board meeting was held on November 20, 1996, and that the board voted 4 to 3 against signing the collective-bargaining agreement. Gottlieb himself voted in favor of signing the agreement. Babad and three other board members voted against the contract. One of the board members voting against the agreement was Carmela Zloczewski whom Gottlieb identified as the secretary of the board of directors. Gottlieb believed that the employees' attitude and work had improved and he felt that he could sign a contract. After the meeting, Gottlieb telephoned Spataro to inform him that the board had voted against the contract. Gottlieb identified minutes of the meeting of November 20 signed by himself as secretary pro tem.

Doyle testified that the meeting of November 20, 1996, was not an official meeting of the board at which votes on issues properly could be taken. According to Doyle, due notice of the meeting had not been given to all the board members. Further, there is a dispute as to the identity of a board member who is the secretary of the board. According to Doyle, a member of the board and its secretary is Pat Cruz. Doyle testified that there were irregularities in a shareholder vote held in July to elect a new board of directors and that an official election never took place. Doyle maintained that Carmela Zloczewski was not a lawfully elected member of the board and that she was not its secretary. Gottlieb did not address these issues in his testimony, and the General Counsel did not call him to rebut Doyle's testimony that Zloczewski was not a properly elected board member and that the meeting of November 20 was not an official meeting at which a vote could be taken.

When Gottlieb told Spataro that the board had not approved the collective-bargaining agreement, the Union struck to force the cooperative to sign the contract.

Gottlieb testified that the Austin Gardens' employees struck on December 1, 1996. Spataro was present on the picket line with the employees and he yelled to Gottlieb that he should sign the contract, and that he should do it now. Gottlieb stated that he received six telephone calls that week, on December 2 and 3, from a man with a "Yugoslavian" accent who said, "You didn't sign the contract, you're an easy target, you're tall, we're going to shoot you, and then we're going to take care of the family. Sign the contract, you're a total target, we're going to get you."[8] All the calls were made by the same person. Gottlieb said that Zloczewski told him that she had received a threatening call. On December 7, 1996, Gottlieb testified, he signed the contract and brought it downstairs to the picket line. He gave the signed contract to Sait Zilkic, one of the striking employees.[9] Gottlieb testified that he told Zilkic that the collective-bargaining agreement was not approved by the board, that he was just giving the contract to Zilkic "to hold," and that he had to contact Babad to see if he would agree to signing the contract. According to Gottlieb, he told Zilkic to hold the contract and not to give it to anyone. Gottlieb testified that he signed the contract because he was under pressure from the screaming and yelling from Spataro and also because of the telephone calls threatening him and his family. Gottlieb said that he spoke to a police officer about the telephone calls. He did not state what the nature of his conversation was nor when the conversation occurred. There is no evidence that the officer he spoke to made an official police report.

Doyle testified that many of the tenant shareholders were upset that the employees had to go out on strike. They felt sympathy for the long-term workers who were outside picketing in the cold. One such tenant conducted a survey and concluded that most of the shareholders wanted the contract to be signed so that the employees could return to work. The tenants were also upset because Babad had brought in people whom Doyle called "scabs" to work in the building. Doyle said that he spoke to one of these people, a Yugoslavian who was menacing women tenants in the lobby. Gottlieb spoke to Doyle during the strike and complained that although all the tenants were blaming him for not signing the contract and for causing a strike, he actually was in favor of the contract. Gottlieb said it was Doyle's fault that a person with a European accent had made a threatening phone call to his wife. On December 6, Gottlieb told Doyle that he was willing to sign the contract and he asked Doyle for a copy. After Doyle supplied the contract, Gottlieb signed it and gave it to the workers the next day.

Zloczewski testified that she got 10 threatening telephone calls during the strike to the effect that she would be shot with a

[5] Gottlieb is a high school teacher.

[6] The record does not disclose what bargaining, if any, had taken place before this date.

[7] Gottlieb did not testify why Spataro was invited. The General Counsel seems to fault the Union for failing to have its agent in attendance at a corporate board meeting where approval of a contract was on the agenda. The rationale for this position has not been set forth.

[8] Two of the three employees of the building are Yugoslavian, but I must emphasize that there is absolutely no suggestion in the record that the employees made the purported threatening telephone calls. No witness testified that he or she recognized the voice of an employee making any threats.

[9] Gottlieb initially testified that he signed "the contract" and gave "the contract" to Zilkic. Later, he maintained that he signed two copies of the contract on December 7 and gave them both to Zilkic on the same day.

gun if she did not sign the contract. These calls began after the beginning of December and continued for a couple of weeks. Zloczewski told both Gottlieb and her husband about the calls. Her husband told her not to call the police because, he said, "What can they do for you?"

Spataro testified that the strike began on December 4, 1996. On Saturday, December 7, Spataro arrived at the picket line at about 8 a.m. and Zilkic gave him a single, signed, collective-bargaining agreement. Spataro told the employees that the strike was over. Because Spataro needed two signed copies of the agreement, one for the Union's records and one to send back to Austin Gardens after it was countersigned by the union president, he asked the building superintendent to give another copy of the agreement to Gottlieb and ask for his signature. On Monday, December 9, Spataro saw the superintendent and was given a second copy of the contract signed by Gottlieb. Spataro denied that he ever threatened anyone by telephone and he stated that he did not know anybody who had made threats.[10]

Zilkic, who has worked for Austin Gardens for 13 years, testified that the strike began on December 4. On Saturday, December 7, Zilkic was in front of a building wearing a picket sign when Gottlieb came up to him and handed him a contract printed on yellow paper. Gottlieb told Zilkic that he had a contract and asked him to give the contract to Spataro. Gottlieb said that Spataro thought that he did not want to sign the contract but that he had indeed signed it. Zilkic denied that Gottlieb said that he did not want to sign the contract, and he denied that Gottlieb informed him that the contract was not approved by the board and that he was to hold it until Babad approved it. Zilkic was sure that Gottlieb gave him one contract and that he was told to give it to Spataro. When Spataro came to the picket line that day, Zilkic gave him the signed contract and Spataro told the employees that the strike was over and that they should go back to work.

Building Superintendent Ilijas Dervievic, who has worked for Austin Gardens for 20 years, testified that the strike began on December 4, 1996.[11] On December 7, Dervievic testified, Spataro asked him whether he had a spare copy of the collective-bargaining agreement because he needed a second signed copy of the document. That day, Dervievic found a copy of the agreement in his shop and took it to Gottlieb's apartment where he gave the document to Gottlieb's wife and told her that Gottlieb had to sign it. The next day, Gottlieb brought the signed contract to Dervievic's apartment and left it with Dervievic's children. Eventually, Dervievic gave this contract to Spataro.

2. Events after the contract signing

Gottlieb testified that on the evening of December 7 he telephoned Babad and informed him that he had signed the collective-bargaining agreement. Babad replied that this was illegal, that he had not consulted with the board, and that he would sue Gottlieb. Then, Gottlieb telephoned Morris Tuchman, the attorney for Austin Gardens, and informed him that he had signed the contract.

On Monday, December 9, 1996, Tuchman sent a letter to the Union asserting that Gottlieb had given him an affidavit to the effect that he had signed the contract because his life was repeatedly threatened and that he executed the agreement with the specific understanding that it was subject to board ratification.[12] The letter went on to state:

> Please be advised that the Board has not ratified the agreement and the contract is therefore rejected. Please be further advised that this office stands ready to negotiate with your labor organization so that an acceptable contract can be executed and ratified.

According to Doyle, Gottlieb said he had been threatened with a lawsuit by Babad for signing the collective-bargaining agreement. Babad also called Doyle and threatened to pull all of his business from Doyle's Employer because Doyle had encouraged Gottlieb to sign the agreement.[13] Babad told Doyle that if the cooperative were going to sign a contract with the Union, it should have remained part of the RAB because that was a more favorable deal for the Employer than the independent contract that Gottlieb had signed. Pursuant to this conversation, Doyle caused the cooperative to join the RAB.

On January 9, 1997, Gottlieb received a copy of the collective-bargaining agreement signed by the union president. The cover letter requested that all terms of the agreement be implemented by the employer and informed Gottlieb that a grievance had been filed on December 31, 1996, protesting the failure to pay one of the employees since December 7, and protesting the failure to implement the terms of the collective-bargaining agreement. The grievance referred to in the January 9 letter was actually a demand for arbitration which had been served on the Employer.

According to the arbitrator's opinion dated June 12, 1997, Austin Gardens did not appear on two scheduled arbitration dates and was found in default. On April 18, 1997, over the opposition of the Union, the arbitrator granted Austin Gardens' request to open the default and set the matter down for hearing on June 5.[14] Austin Gardens had argued to the arbitrator that a reopening was proper because it was now represented by the RAB and that time was needed to prepare a defense in the arbitration case. However, Austin Gardens did not appear at the arbitration on June 5; instead, it sent a letter stating that the RAB was not authorized to represent it in the arbitration case. The arbitrator once again declared Austin Gardens in default, found a violation of the 1994–1997 contract and awarded back pay to the three employees. The arbitrator noted that Austin Gardens had "flagrantly failed to appear after receiving proper notice" and had "intentionally [made] misrepresentations to the Arbitrator who relied on them in his decision" to open the earlier default.

3. Article V of the collective-bargaining agreement

Article V of the collective-bargaining agreement defines an arbitrable grievance as. "Any dispute or grievance between the Employer and the Union which cannot be settled directly by them." The agreement provides that the arbitrator's award shall be "final and binding upon the parties."

B. Positions of the Parties

The General Counsel argues that the collective-bargaining agreement is voidable because the threatening phone calls con-

[10] Spataro does not have a Yugoslavian accent.

[11] Dervievic is from Yugoslavia.

[12] No such affidavit was introduced at the instant hearing.

[13] The nature of Babad's business and of Doyle's employment does not appear in the record.

[14] Austin Gardens consented to a new hearing date of June 5.

stitute an intervening defect. The General Counsel urges that it would be against public policy for the Union to benefit from the unlawful threats against Gottlieb. The General Counsel asserts that Gottlieb had no authority to bind the cooperative corporation. Citing the by laws of the Board, he concludes that Gottlieb could sign the collective-bargaining agreement only if authorized to do so by the board of directors and he states that a majority of the board voted to against permitting Gottlieb to sign the contract.

The General Counsel contends that the apparent authority of Board President Gottlieb to sign the contract was timely rescinded before the Union could act to its detriment in reliance on the signed document. Therefore, the contract was voided. The General Counsel argues that because the Union did not countersign a copy of the contract before December 9, the withdrawal of Gottlieb's authority was valid. The General Counsel argues that the violation should not be deferred to the grievance and arbitration procedure because the heart of the issue is whether a contract existed between the parties. The General Counsel concludes that the Union refused to bargain when asked to do so by Austin Gardens.

Charging Party Austin Gardens argues that the contract executed by Gottlieb on December 7, 1996, was withdrawn on December 9 and that no valid contract exists because the Union did not countersign the collective-bargaining agreement before December 9. The Charging Party told the Union on December 9 that Gottlieb did not have board approval of the collective-bargaining agreement and Gottlieb's signing of the contract was *ultra virus* [sic]. The Union knew that board ratification was required and such ratification was never obtained. The Charging Party argues that Gottlieb's signature was obtained by duress because he was threatened by anonymous telephone calls.

The Union urges that the matter should be deferred to arbitration, citing the broad arbitration clause in the collective-bargaining agreement. The Union argues that Gottlieb, as president of the board, had been negotiating with the Union for a new collective-bargaining agreement. Although the Union knew that he could not sign without checking with the board of directors, the Union was entitled to rely on his delivery of a signed contract as evidence that he was acting within his authority. The Union asserts that it was not charged with making independent inquiries concerning board actions, especially in view of the fact that Gottlieb signed two copies of the contract on two different occasions. The Union points out that the alleged threats have not been linked to any union agent and it disputes that the contract was signed under duress.

C. Discussion and Conclusions

The General Counsel has not cited any cases which hold that where the existence of the collective-bargaining agreement itself is in issue, the Board should not defer to the arbitration procedures of the contract. The Union cites *Acquire v. Canada Dry Bottling*, 906 F.Supp. 819 (E.D.N.Y. 1995), for the proposition that the question whether a contract was entered into under duress is a question for the arbitrator. The definition of a grievance in the collective-bargaining agreement quoted above is broad and does not exclude the question whether the contract was entered into under duress or whether the Union had notice that Gottlieb had no authority to sign the contract. In the instant case, Austin Gardens defaulted at the three arbitration hearings which were held to decide whether it was in violation of the 1994–1997 agreement. Had it appeared at the June 5 hearing, Austin Gardens could have argued that the contract was obtained under duress and that the Union knew that Gottlieb was not authorized to sign it. Because Austin Gardens failed to appear at the arbitration, those questions were not presented to and considered by the arbitrator. There is no evidence in the record that the hearing before the arbitrator was not fair and regular, the contract itself provides for binding arbitration and there is no evidence that the arbitrator's decision is repugnant to the Act. Therefore, this case should be deferred to the arbitration provisions of the collective-bargaining agreement. *Spielberg Mfg. Co.*, 112 NLRB 1080 (1955).

I did not find that the case should be deferred to arbitration, I would not find that the Union engaged in any violations of the Act.

I do not credit Zloczewski that she received any threatening telephone calls urging her to sign the contract. Zloczewski testified that she received 10 threatening telephone calls beginning in December and continuing for a couple of weeks. Even if I accepted Gottlieb's testimony that the strike began on December 1, it is clear that the strike ended on December 7. Thus, even under the General Counsel's view of the facts, the strike lasted for 6 days. Zloczewski is thus highly inaccurate in her recollection of how long the strike lasted and how long it took for Gottlieb to sign the contract and end the strike. If Zloczewski had in truth received calls threatening to shoot her with a gun, she would have recalled the details of the timing of these calls more accurately. Further, although Zloczewski claimed to have received 10 calls, she only informed Gottlieb of one call, another anomaly in her testimony. Someone who received 10 such calls would have informed Gottlieb, the one who ultimately signed the contract, of more than one call. Indeed, it is hard to imagine a person receiving 10 telephone calls threatening to shoot her with a gun who would not report such calls each time they were received. This reasoning brings me to the ultimate conclusion concerning Zloczewski's testimony. When asked the obvious question about her failure to inform the police concerning ten telephone calls threatening her life with a gun over a period of several weeks, Zloczewski answered that her husband had asked her what the police could do to help her. This reply strains credulity to an absurd point. I cannot bring myself to believe that any person would fail to report repeated and specific death threats to the New York City Police Department, an organization widely known to be efficient and vigorous and which has achieved a marked decline in the local crime rate. It is ludicrous to suppose that Zloczewski would not have contacted the police and demanded that they investigate. I find that Zloczewski's testimony about threatening telephone calls was fabricated.

For the same reasons, I do not credit Gottlieb that he received six telephone calls threatening to shoot him and his family. Gottlieb, a high school teacher and president of the cooperative board, is a man of education and substance. I do not believe that he would have sat silent at home during a labor dispute if he and his family had been threatened. Had it been true that a caller with a Yugoslavian accent had repeatedly threatened to shoot him if he did not sign the contract, Gottlieb would have insisted that the police begin an investigation immediately, given the ongoing labor dispute and the pickets in front of Gottlieb's residence who were yelling at him to sign the contract. Instead of complaining to the police that his life had been threatened six times, Gottlieb mentioned something

about a threatening call to Doyle, but he informed Doyle that someone with a European accent had made a threatening call to his wife.[15] Since Gottlieb did not testify in this proceeding, the question of what was said is unresolved. Gottlieb placed the threatening calls on December 2 and 3, before the date the union witnesses gave as the start of the strike and well before the December 7 date when he signed the contract. Thus, even Gottlieb's version of the facts does not support the picture of a man impulsively driven by fear to sign a contract. Since the testimony of the witnesses makes it clear that Babad was a powerful man to be reckoned with in the cooperative's affairs, it is unbelievable that Gottlieb would not inform Babad of the threats that were impelling him to sign the collective-bargaining agreement. Finally, Doyle's uncontradicted testimony shows that Gottlieb wanted to sign the contract and that the shareholder survey showed that there was great support for executing the collective-bargaining agreement and ending the strike. Thus, there were reasons for Gottlieb to sign the contract when he did which were unrelated to the purported telephoned threats. I do not credit Gottlieb that he received any threatening telephone calls such as he testified to. I find that his testimony was fabricated.

Having found that both Zloczewski and Gottlieb fabricated testimony, I shall not rely on any of their testimony where it is contradicted by more reliable evidence. I credit the testimony of Spataro, Doyle, Zilkic, and Dervievic. Although Spataro and Doyle did not have perfect recall of the events, this tends to show that they had not fabricated their testimony. Doyle's demeanor was particularly impressive. Likewise, Zilkic and Dervievic testified in a straightforward manner without reservation.

Having discredited Gottlieb and Zloczewski, and relying on the testimony of Spataro, Doyle, Zilkic, and Dervievic, I find the following:

Board President Gottlieb and Union Agent Spataro met to discuss the contract in the summer of 1996. Gottlieb spoke to Spataro about problems with the employees. Gottlieb took two copies of the proposed contract and said that he would check with the board of directors. In July 1996, Gottlieb informed the shareholders at an annual meeting that he was very close to signing the collective-bargaining agreement. A meeting of board members was held on November 20, 1996. The record is not clear that this meeting was attended by a majority of lawfully elected directors of Austin Gardens and there is a dispute whether any vote taken would be binding on the board. Babad and his designated directors voted against signing the collective-bargaining agreement. Gottlieb and Doyle voted for the contract. The Union struck Austin Gardens on December 4, 1996. Babad brought in temporary workers at least one of whom menaced the tenants. During the strike, many of the shareholders indicated that they favored signing the collective-bargaining agreement and many shareholders blamed Gottlieb for failing to sign the contract. On December 6, Gottlieb told Doyle that he was willing to sign the agreement and Doyle gave him a copy of it. On December 7, Gottlieb gave one copy of a signed contract to Zilkic and asked him to give it to Spataro. Gottlieb told Zilkic that although Spataro doubted that he wanted to sign the contract, he had in fact signed it. As soon as Spataro came to the picket line and was given the signed contract, he ended the strike and told the employees to go back to work. Spataro instructed Dervievic to give Gottlieb a second copy of the collective-bargaining agreement to sign. Dervievic dropped off a copy of the agreement at Gottlieb's apartment and the signed document was brought back to him on December 8. On the evening of December 7, Gottlieb informed Babad that he had signed the contract. Babad threatened to sue Gottlieb. Babad also called Doyle and threatened to injure his employment relationship. On December 9, Tuchman wrote to the Union informing it that the agreement had not been ratified and that it was rejected. On December 31, 1996, the Union filed a demand for arbitration for failure to adhere to the terms of the contract. On January 9, 1997, the Union returned a countersigned copy of the collective-bargaining agreement to Gottlieb and requested implementation of its terms. The Union informed Gottlieb that one of the employees had not been paid for a month. After defaulting twice on the arbitration, Austin Gardens obtained another hearing and convinced the arbitrator to set aside the default on the ground that the RAB was entering the case on its behalf. However, Austin Gardens failed to appear at the reopened arbitration hearing and revoked the RAB authority to represent it at the arbitration. The arbitrator found that Austin Gardens had violated the 1994–1997 contract and awarded back pay to the three employees.

As discussed above, I do not credit the testimony that Gottlieb or Zloczewski received any threats in connection with the signing of the collective-bargaining agreement. As a result, I cannot find that the contract was signed under duress.

It is undisputed that in the summer of 1996 Gottlieb informed Spataro that he had to check with the corporation's board of directors before signing the collective-bargaining agreement. During the next few months, Gottlieb negotiated with Spataro and informed him of developments, including the fact that the result of the November 20, 1996 meeting was that Gottlieb would not sign the contract. I find that the Union was entitled to view Gottlieb as the representative of the board and to rely on his statements and actions as being made on behalf of the board: Gottlieb was the board president and had been the cooperative corporation's sole negotiator. When on December 7, after the strike had been underway for 4 days, Gottlieb delivered a signed contract to an employee on the picket line and instructed him to give it to Spataro, the Union was entitled to rely on Gottlieb's action and to assume that he was acting within the scope of his authority. The Union had no reason to suspect that after a strike which was distressing to the shareholders the president of the corporation had not finally received the authority of his board to agree to a contract. The purpose of the strike was to force the Employer to change its decision not to sign the contract. When Gottlieb delivered a signed contract, the Union was reasonable in assuming that Gottlieb had checked with his board again and had been given a different answer than in November. Had Gottlieb intended any limit on his action in delivering the signed contract to the Union he could have indicated this in writing on the document itself. I find that on December 7 the Union was not made aware of any limitations on Gottlieb's apparent authority as president and bargaining agent. *Kasser Distiller Products Corp.*, 307 NLRB 899 (1992), enfd. 19 F.3d 644 (3d Cir. 1994); *University of*

[15] Gottlieb's testimony that he spoke to a police officer about the calls is irrelevant herein. Gottlieb did not say when he spoke to the officer or what he reported. For aught that appears in the record, the conversation with the officer could have taken place the day before the instant hearing. If Gottlieb had made a real complaint, there would have been an official police report which the General Counsel undoubtedly would have entered into evidence.

Bridgeport, 229 NLRB 1074 (1977). Instead, without any further communication to the Union, Gottlieb saw that the pickets were immediately removed from Austin Gardens and that the men returned to work. The Union ended the strike in reliance on the receipt of the signed collective-bargaining agreement. Contrary to the General Counsel's position that the Union did not act to its detriment before Austin Gardens attempted to revoke the contract on December 9, I find that the action of removing the picket line and returning to work constituted a major change in position. Having called a strike as a weapon in its struggle to obtain a collective-bargaining agreement, the Union's action in ending the strike was indeed a most significant act. Further, it is of no moment that the Union did not return a countersigned agreement until 1 month after it received Gottlieb's signed copy. Once Gottlieb had delivered a signed collective-bargaining agreement, he had signified his acceptance of the Union's contract demands and Austin Gardens was bound by the bargain he made. There is no requirement that the Union countersign the contract. It is well established that technical rules of contract law do not control whether a collective-bargaining agreement has been reached. *Deluxe Poster Co.,* 257 NLRB 45, 50 (1981); *Ivaldi v. NLRB*, 48 F.3d 444, 448 (9th Cir. 1995). Thus, on December 9, Respondent had no lawful power to revoke the collective-bargaining agreement.

It would be inimical to the process of collective bargaining if this employer were permitted to avoid honoring a collective-bargaining agreement by the tactics it has employed. There is apparently a dispute as to the composition of the board of directors and as to Babad's power on the board. That dispute might be subject to proceedings in the local courts. Yet the employer wishes to have the benefit of its work force and, to that end, Gottlieb was bargaining with the Union. If the Union could not rely on Gottlieb's apparent authority to sign the contract, it might have to remain on strike until the threatened lawsuits between Babad and his fellow board members were resolved, or the employees would be relegated to working without a contract for several more years. Neither of these alternatives fosters labor peace.

CONCLUSION OF LAW

The General Counsel has not proved that the Respondent Union engaged in any violations of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[16]

ORDER

The complaint is dismissed.

[16] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.